Supreme Court, U.S.
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In The

Supreme Court of the United States

DENIZ CINAR AYDINER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Oregon

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

When the district attorney in Portland, Oregon, learned that the chief suspect in a murder investigation was a Turkish citizen who had returned to his home country, he devised a plan involving trickery and deceit to lure the petitioner back into the United States under false pretenses to face a criminal prosecution and the death penalty. The district attorney's scheme, carried out with the assistance of the Department of Homeland Security, was in violation of the extradition treaty between the United States and the government of Turkey, which never would have agreed to extradite its own citizen to face the death penalty.

The Questions Presented in this case are:

1. Did the extradition treaty between the United States and Turkey provide the exclusive means for state authorities to attempt to obtain custody of a person found in Turkey, such that the violation and circumvention of the treaty through a scheme of trickery and deceit designed to lure the person into the country outside of the extradition process deprived the Oregon court of personal jurisdiction in the ensuing criminal prosecution?

QUESTIONS PRESENTED – Continued

2. Did the state violate petitioner's right of due process under the Fourteenth Amendment to the United States Constitution when it devised a scheme of trickery and deceit to lure petitioner into the country as a means of evading the extradition treaty under which Turkey would not have extradited one of its own citizens to face the death penalty?

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PETITION FOR WRIT OF CERTIORARI

Deniz Cinar Aydiner respectfully petitions for a writ of certiorari to review the judgment of the Oregon Court of Appeals in this case.

OPINIONS BELOW

The unpublished order of the Multnomah County Circuit Court denying petitioner's motion to dismiss for lack of jurisdiction is set forth at App. 12. Its letter opinion denying petitioner's motion for reconsideration is set forth at App. 16. The published decision of the Oregon Court of Appeals (App. 1) is reported at 228 Or. App. 282, 208 P.3d 515 (2009). The unpublished order of the Oregon Supreme Court denying Mr. Aydiner's petition for discretionary review is set forth at App. 21; and its unpublished order denying Mr. Aydiner's petition for reconsideration is found at App. 23.

JURISDICTION

The Oregon Court of Appeals issued its decision on May 13, 2009. The Oregon Supreme Court denied Mr. Aydiner's petition for discretionary review on October 7, 2009. The Oregon Supreme Court denied Mr. Aydiner's petition for reconsideration on June 11,

2010. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION AND TREATY INVOLVED

Article VI(2) of the United States Constitution provides: "[A]ll Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The Fourteenth Amendment to the United States Constitution provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

Article 1(1) of the 1981 Treaty on Extradition and Mutual Assistance in Criminal Matters Between the United States of America and the Republic of Turkey (hereinafter "United States-Turkey Extradition Treaty"), under the heading "Obligation to Extradite," provides:

> "The Contracting Parties undertake to surrender to each other, in accordance with the provisions and conditions laid down in this Treaty, all persons who are found within the territory of the Requested Party and who are being prosecuted for or have been charged with an offense or convicted of an

> offense, or are sought by the other Party for the enforcement of a judicially pronounced penalty for an offense committed within the territory of the Requesting Party." (App. 27).

The complete text of the 1981 United States-Turkey Extradition Treaty is set forth in the appendix beginning at App. 24.

STATEMENT OF THE CASE

Factual Background

In June of 2003, Mr. Aydiner became the target of a homicide investigation into the 2001 death of a University of Portland student in Portland, Oregon. At the time he became a suspect, Mr. Aydiner, a citizen of Turkey, had returned to his country to visit his family. In March of 2003, Mr. Aydiner attempted to return to the United States to join his wife, a United States citizen, whom he had married prior to his departure. However, he was barred entry into the United States because he had overstayed his previous visa.

Because of his overstay and his attempt to re-enter, Mr. Aydiner faced being barred from the United States for a minimum of three years. Mr. Aydiner and his wife began making efforts to overcome this problem by having Mr. Aydiner apply for a lawful visa as the spouse of a U.S. citizen. Meanwhile, law enforcement located Mr. Aydiner in Turkey by tracking the use of his ATM card. As discussed in greater detail

below, had the authorities requested extradition pursuant to the United States' extradition treaty with Turkey, the government of Turkey would have refused to extradite Mr. Aydiner because he is a Turkish citizen. Faced with this reality, and aware of Mr. Aydiner's immigration problem, the Multnomah County District Attorney's office, in conjunction with the United States Department of Homeland Security (hereinafter DHS) devised a scheme to circumvent the immigration laws and the extradition treaty by luring petitioner back into the country to be arrested under the false pretense that he had been granted a waiver of debarment and that he was eligible for a visa.

In November of 2003, the district attorney obtained a secret warrant to arrest the defendant. The district attorney then sent a letter to Ken Leutbecker, the Director of Parole for the Office of International Affairs of the DHS, requesting that the DHS issue a "silent parole" so that Mr. Aydiner could enter the United States to be arrested on the warrant. The silent parole process is used to admit persons into the country who otherwise would be prohibited under immigration law. The request was granted. In December 2003, a DHS official stationed in Athens, Greece, falsely told Mr. Aydiner's wife that Mr. Aydiner had been granted a waiver of the bar to his re-entry. To further the ruse, this official and others instructed Mr. Aydiner on how he could apply for a visa and enter the United States. Ultimately, on January 16, 2004, defendant traveled to the United

States pursuant to the instructions. Upon his arrival, he was arrested and was told for the first time that he was charged with offenses carrying the death penalty.

At no time did the state or federal officials notify appropriate Turkish authorities of any of the aforementioned events or that Mr. Aydiner was the target of a capital murder investigation. At no time did the state or federal officials invoke the extradition treaty between the United States and Turkey.

Assertion of Federal Issues in State Court

Mr. Aydiner filed a motion to dismiss the indictment on the ground that the court lacked personal jurisdiction over the defendant because the state secured his presence through a means outside the extradition process and in violation of the 1981 United States-Turkey Extradition Treaty. The Multnomah County Circuit Court denied the motion to dismiss. (App. 12). Petitioner filed a motion to reconsider, raising a Due Process challenge under the Fourteenth Amendment to the state's scheme of trickery and deceit in luring the petitioner into the country outside of the extradition process. The court denied defendant's motion for reconsideration. (App. 16).

Petitioner entered a conditional no contest plea to several counts of the indictment, preserving his right to appeal, and was convicted of aggravated murder and other crimes.

Defendant filed an appeal with the Oregon Court of Appeals, and made the following assignments of error:

> "The trial court erred in denying defendant's Motion to Dismiss for lack of personal jurisdiction where the state violated the terms of the extradition treaty between the United States and Turkey in using trickery and deceit to cause defendant to return to the United States from his home country of Turkey to face criminal prosecution and the death penalty."

> "The trial court erred in denying defendant's motion to reconsider in which defendant argued that the indictment should be dismissed on the ground that the prosecutor used trickery and deceit to cause defendant's return to the United States, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution."

The Court of Appeals affirmed in a published opinion set forth at App. 1. The Court of Appeals relied mainly upon this Court's decision in *United States v. Alvarez-Machain*, 504 U.S. 655, 112 S.Ct. 2188 (1992), in which the Court held that the extradition treaty between the United States and Mexico did not prohibit United States law enforcement officials from forcibly abducting a Mexican national from his home in Mexico and bringing him into the United States to face a criminal prosecution. The Oregon Court of Appeals held that "the signatories to the

treaty [between the United States and Turkey] did not intend the extradition process to be exclusive." The Court stated:

> "The treaty * * * contains no express prohibition against obtaining a person's presence by any other means, including trickery or deceit. To the extent that defendant urges us to read into the treaty such an implied prohibition, we reject that contention as well. Given that the United States Supreme Court declined to read a prohibition on forcible kidnapping into a similarly worded extradition treaty in *Alvarez-Machain* – and concluded that general principles of international law did not require such a prohibition to be implied – we do not understand how a different result could obtain relating to much less intrusive government conduct." *Aydiner*, 208 P.3d at 518 (App. 9).

The Court of Appeals also rejected petitioner's challenge to the court's jurisdiction under the Due Process Clause, again relying upon the *Alvarez-Machain* decision:

> "In [*Alvarez-Machain*], once the Court concluded that the defendant's abduction did not violate the relevant extradition treaty, the Court similarly concluded that the abduction did not violate his right to due process. *See* 504 U.S. at 661, 670, 112 S.Ct. 2188 ('"'[S]uch forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for

> such an offence, and presents no valid objection to his trial in such court.'"' (quoting *Ker v. Illinois*, 119 U.S. 436, 444, 7 S.Ct. 225, 30 L.Ed. 421 (1886))). In this case, because we have concluded that no violation of the treaty occurred, we '"need not inquire as to how [defendant] came before [the court]."' *See Alvarez-Machain*, 504 U.S. at 66, 112 S.Ct. 2188." *Aydiner*, 208 P.3d at 519 (App. 10-11).

Mr. Aydiner petitioned the Oregon Supreme Court for discretionary review. The Questions Presented to the Oregon Supreme Court were as follows:

> "When two nations enter into a treaty governing the extradition of persons accused of crimes, does the extradition treaty provide the exclusive means for a requesting country to attempt to obtain the presence of a citizen of the other country?
>
> "Does the extradition treaty with Turkey confer individual rights on a defendant that may be enforced in a judicial proceeding?
>
> "Does the state violate a person's right of due process under the Fourteenth Amendment to the United States Constitution when it devises a scheme of trickery and deceit to lure a person into the country as a means of evading an extradition treaty?"

The Oregon Supreme Court denied Mr. Aydiner's petition for review. (App. 21). The Court also denied Mr. Aydiner's petition for reconsideration. (App. 23).

REASONS FOR GRANTING THE PETITION

It has been eighteen years since the Court issued its controversial decision in *United States v. Alvarez-Machain* that upheld the government's conduct of forcibly abducting a foreign national from his home country of Mexico in order to bring him to an American court to face criminal charges. The Court relied in part upon the fact that the extradition treaty with Mexico does not expressly prohibit such abductions outside of its terms. In the intervening years, this Court has not granted certiorari in any case seeking to limit what would appear to be the far reaching scope of the *Alvarez-Machain* decision and its impact on international relations and the cooperative agreements the United States has entered with many nations regarding the extradition of accused persons and other matters of criminal justice.

This petition raises two core questions. First, since *Alvarez-Machain* was issued, have lower courts applied it too broadly to hold that any means of obtaining an individual from another country outside of the extradition process is acceptable, and have those courts given too little attention to the language of the particular extradition treaty at issue, as distinguished from the U.S.-Mexico treaty involved in *Alvarez-Machain*? Petitioner contends that the Oregon Court of Appeals has done just that, by failing to place *Alvarez-Machain* in the appropriate context of the treaty at issue in that case and distinguishing those circumstances from the issues surrounding a

fair interpretation of the United States-Turkey Extradition Treaty.

Second, to the extent that this Court held in *Alvarez-Machain* that no extradition treaty should be interpreted to prohibit means outside the extradition process for procuring a person's presence in this country for a criminal prosecution – including kidnapping, coercion, trickery and deceit – unless such prohibition is set forth expressly, should that holding be revisited and overruled?

As amplified below, petitioner contends that this case presents an important issue of international criminal law pertaining to the interpretation of extradition treaties. It affords this Court with an opportunity to give integrity to such agreements and to signal to nations that partner with us in matters relating to criminal justice that this nation will honor the rule of law and will interpret and carry out extradition processes in good faith as contemplated by the parties. *See Wright v. Henkel*, 190 U.S. 40, 57, 23 S.Ct. 781 (1903) (extradition treaties "must receive a fair interpretation, according to the intention of the contracting parties, and so as to carry out their manifest purpose.")

Under the Supremacy Clause, treaties constitute part of the "law of the land" once they are ratified and approved by two-thirds of the Senate. U.S. Const., Article VI(2). Extradition treaties are the result of extensive negotiations between two nations over all matters relating to the extradition of suspects and

mutual assistance in criminal prosecutions, including the categories of crimes that trigger a duty to extradite, the procedures for extradition, and whether a party may refuse to extradite its own citizen. Extradition treaties allow nations to prosecute criminals who are found abroad, without invading the sovereignty of the nation in which the person is found, and on terms that are acceptable to the requested nation. Indeed, mutual respect for each other's sovereignty is a key factor that has given rise to the existence of bilateral extradition treaties, as a modern and civilized alternative to incursions, abductions, and other provocative acts.

However, *Alvarez-Machain* established a precedent that law enforcement officials in this country may unilaterally ignore an extradition treaty altogether when it suits them, and may obtain a person's presence in this country through any means – including forcible abductions and trickery and deceit. Such conduct is barred only in the unlikely event that the other nation had the foresight to negotiate a specific prohibition of blatantly illegal means of procuring someone's presence wholly outside of the extradition process. Regrettably, this precedent makes a mockery of this nation's obligations under extradition agreements. If extradition treaties are to be returned to their status as enjoying the full force of law, this Court must reconsider its holding in *Alvarez-Machain*.

At the outset, petitioner wishes to make clear what is *not* at issue in this case, and that is the

practice of "rendition," or "extraordinary rendition," in which the government, acting primarily upon concerns for national security, causes a person to be moved from one country to another for purposes of confinement and interrogation, but not necessarily prosecution. That practice, which might share a common heritage as the *Alvarez-Machain* case, nevertheless involves a sufficiently distinct set of legal and political issues that are not appropriately raised in a criminal case, in which the defendant unquestionably is entitled to the full panoply of rights afforded by the American criminal justice system. This case involves a claim that petitioner's rights under a treaty and under the Due Process Clause were violated in the manner in which the State of Oregon brought petitioner into this country for a criminal prosecution, and does not involve the legitimacy of the government's extraterritorial conduct in other settings.

The remainder of this petition will summarize the *Alvarez-Machain* decision, the dissenting view of Justice Stevens, and the concerns raised at home and abroad over the precedent it set regarding the interpretation of extradition treaties. After discussing how the Oregon Court of Appeals incorrectly applied the *Alvarez-Machain* to the unique extradition treaty at issue in this case, the petition will close with a summary of grounds warranting Supreme Court review of this important case.

1. The *Alvarez-Machain* Decision

Alvarez-Machain involved the prosecution of a Mexican physician who was a suspect in the torture and killing of an agent of the Drug Enforcement Agency (hereinafter DEA). The defendant was forcibly abducted from his office in Guadalajara, Mexico, by persons acting under the direction of DEA agents and was taken without his consent to the United States to stand trial for his alleged offenses. The defendant moved to dismiss the indictment claiming that his abduction constituted outrageous governmental conduct, and that the district court lacked jurisdiction to try him because he was abducted in violation of the extradition treaty between the United States and Mexico. The district court rejected the outrageous government conduct claim, but agreed that it lacked jurisdiction to try the defendant because his abduction violated the extradition treaty. The Ninth Circuit affirmed.

On review, the Supreme Court began its analysis of the case with a discussion of *United States v. Rauscher*, 119 U.S. 407, 7 S.Ct. 234 (1886), in which this Court held that a person who has been brought to a jurisdiction of this country

> "by virtue of proceedings under an extradition treaty, can only be tried for one of the offences described in that treaty, and for the offence with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose

> asylum he had been forcibly taken under those proceedings."

Rauscher, 119 U.S. at 430. This holding reflects the "doctrine of specialty" in extradition treaties. More broadly, as confirmed by this Court in *Alvarez-Machain*, the *Rauscher* decision established that a violation of an extradition treaty may be asserted as a defense to the personal jurisdiction of an American court that has obtained custody of the person through the extradition process. *Alvarez-Machain*, 504 U.S. at 667.

The Supreme Court in *Alvarez-Machain* also discussed its decision in *Ker v. Illinois*, 119 U.S. 436, 7 S.Ct. 225 (1886), in which the Court held that an international abduction of an accused does not deprive a court of jurisdiction if the conduct was not proscribed by the relevant extradition treaty. The Court in *Ker* held that "such forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offence, and presents no valid objection to his trial in such court." *Ker*, 119 U.S. at 444, *quoted in Alvarez-Machain*, 504 U.S. at 661. This *Ker* holding was applied in *Frisbie v. Collins*, 342 U.S. 519, 72 S.Ct. 509 (1952), a case in which the defendant had been kidnapped in Chicago by Michigan officers and brought to trial in Michigan. "This Court has never departed from the rule announced in *[Ker]* that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.'" *Frisbie*, 342 U.S. at 522, *quoted in Alvarez-Machain*, 504 U.S. at 661.

Using *Rauscher* and *Ker* as the benchmarks, the *Alvarez-Machain* court framed the issue in the following terms:

> "[The] first inquiry must be whether the abduction of respondent from Mexico violated the Extradition Treaty between the United States and Mexico. If we conclude that the Treaty does not prohibit respondent's abduction, the rule in *Ker* applies, and the court need not inquire as to how respondent came before it." *Alvarez-Machain*, 504 U.S. at 662.

After examining the text of the Mexican-United States Extradition Treaty, the history of negotiations between Mexico and United States, and general principles of international law, the Court concluded that the treaty neither expressly nor impliedly prohibited abductions. The Court rejected the defendant's argument that an abduction outside of the extradition process constitutes a breach of the core bargain that Mexico and the United States struck when executing their extradition treaty, to-wit, that each country, when presented with a request to deliver a person to the other country for a criminal prosecution, would have the choice whether to surrender the person to the requesting country or to prosecute that person under its own laws. *Alvarez-Machain*, 504 U.S. at 664. The defendant argued that "[t]his preservation of rights would be frustrated if either nation were free to abduct nationals of the other nation for the purpose of prosecution. More

broadly, respondent reasons, * * * that all the processes and restrictions on the obligation to extradite established by the Treaty would make no sense if either nation were free to resort to forcible kidnaping to gain the presence of an individual for prosecution in a manner not contemplated by the Treaty." *Ibid.*

In rejecting that argument, this Court stated that Article 9 of the Mexico-United States Extradition Treaty "does not purport to specify the only way in which one country may gain custody of a national of the other country for the purposes of prosecution." *Ibid.* Furthermore, the Court stated that the "history of negotiation and practice under the Treaty also fails to show that abductions outside of the Treaty constitute a violation of the Treaty." *Id.* at 665. The Court noted that, prior to negotiating the current extradition treaty, Mexico was aware that the United States took the position that the *Ker* decision applied to forcible abductions made outside of the terms of the extradition treaty. Yet Mexico did not attempt to "curtail the effect of *Ker*" in negotiating the terms of the present treaty. Finally, the Court rejected the defendant's argument that customary international law, including the prohibition on international abductions, was sufficient to impose an implied term in the extradition treaty barring such abductions *in lieu* of the extradition process. *Id.* at 667-68.

The Court summarized its holding as follows:

> "In sum, to infer from this Treaty and its terms that it prohibits all means of gaining

> the presence of an individual outside of its terms goes beyond established precedent and practice. In *Rauscher*, the implication of a doctrine of specialty into the terms of the Webster-Ashburton Treaty * * * was a small step to take. By contrast, to imply from the terms of this Treaty that it prohibits obtaining the presence of an individual by means outside of the procedures the Treaty establishes requires a much larger inferential leap, with only the most general of international law principles to support it. The general principles cited by respondent simply fail to persuade us that we should imply in the United States-Mexico Extradition Treaty a term prohibiting international abductions." *Alvarez-Machain*, 504 U.S. at 668-69.

Justice Stevens, joined by Justice O'Connor and Justice Blackmun, wrote a vigorous dissent. *United States v. Alvarez-Machain*, 504 U.S. at 670 (Stevens, J., dissenting). The dissent examined all corners of the extradition treaty with Mexico, and found it to be a "comprehensive document" that covered all substantive and procedural aspects of the extradition process designed to permit the two governments "'to cooperate more closely in the fight against crime and, to this end, to mutually render better assistance in matters relating to extradition.'" *Id.* at 672, *quoting* the Mexico-United States Extradition Treaty. "[T]he Treaty appears to have been designed to cover the entire subject of extradition." *Ibid.* Justice Stevens wrote:

> "The Government's claim that the Treaty is not exclusive, but permits forcible government kidnaping, would transform [the several articles of the treaty] into little more than verbiage. For example, provisions requiring 'sufficient' evidence to grant extradition (Art. 3), withholding extradition for political or military offenses (Art. 5), withholding extradition when the person sought has already been tried (Art. 6), withholding extradition when the statute of limitations for the crime has lapsed (Art. 7), and granting the requested Country discretion to refuse to extradite an individual who would face the death penalty in the requesting country (Art. 8), would serve little purpose if the requesting country could simply kidnap the person." *Id.* at 673.

Justice Stevens urged that a forcible abduction by one party to an extradition treaty in the other party's territory was contrary to the very evil that gave rise to extradition treaties in the first place.

> "Extradition treaties prevent international conflict by providing agreed-upon standards so that the parties may cooperate and avoid retaliatory invasions of territorial sovereignty. According to one writer, before extradition treaties became common, European states often granted asylum to fugitives from other states, with the result that 'a sovereign could enforce the return of fugitives only by force of arms. . . . Extradition as an inducement to peaceful relations and friendly cooperation between states remained

> of little practical significance until after World War I.' M. Bassiouni, International Extradition and World Public Order 6 (1974). This same writer explained that such treaties further the purpose of international law, which is 'designed to protect the sovereignty and territorial integrity of states, and [to] restrict impermissible state conduct.' 1 M. Bassiouni, International Extradition: United States Law and Practice, ch. 5, § 2, p. 194 (2d rev. ed. 1987).
>
> "The object of reducing conflict by promoting cooperation explains why extradition treaties do not prohibit informal consensual delivery of fugitives, but why they do prohibit state-sponsored abductions. *See* Restatement (Third) of Foreign Relations (Restatement) § 432, and Comments a-c (1987)." *Alvarez-Machain*, 504 U.S. at 672 n4 (Stevens, J., dissenting).

Justice Stevens also highlighted a "critical flaw pervad[ing] the Court's entire opinion. It fails to differentiate between the conduct of private citizens, which does not violate any treaty obligation, and conduct expressly authorized by the Executive Branch of the Government, which unquestionably constitutes a flagrant violation of international law, and in my opinion, also constitutes a breach of our treaty obligations." *Id.* at 682 (Stevens, J., dissenting). That different aspect of the *Alvarez-Machain* case is what distinguishes it from *Ker* which involved an abduction by a private party acting outside of government authority.

Finally, Justice Stevens stressed that the particularly brutal crime that the defendant was alleged to have committed

> " . . . provides no justification for disregarding the Rule of Law that this Court has a duty to uphold. That the Executive may wish to reinterpret the Treaty to allow for an action that the Treaty in no way authorizes should not influence this Court's interpretation. Indeed, the desire for revenge exerts 'a kind of hydraulic pressure . . . before which even well settled principles of law will bend.' *Northern Securities Co. v. United States*, 193 U.S. 197, 401, 24 S.Ct. 436, 468, 48 L.Ed. 679 (1904) (Holmes, J., dissenting), but it is precisely at such moments that we should remember and be guided by our duty 'to render judgment evenly and dispassionately according to law, as each is given understanding to ascertain and apply it.' *United States v. Mine Workers*, 330 U.S. 258, 342, 67 S.Ct. 677, 720, 91 L.Ed. 884 (1947) (Rutledge, J., dissenting). The way that we perform that duty in a case of this kind sets an example that other tribunals in other countries are sure to emulate." *Alvarez-Machain*, 504 U.S. at 686-87 (Stevens, J., dissenting).

2. The Reaction to *Alvarez-Machain*

The Court's central holding – that the extradition treaty with Mexico could not be interpreted to prohibit the abduction of a Mexican national in Mexico for purposes of a criminal prosecution in the United

States outside of the extradition process – drew immediate and sharp criticism from legal commentators and the international community. *See, e.g.,* David O. Stewart, "The Price of Vengeance," ABA Journal, Nov. 1992, at 50 (summarizing objections of other nations to the decision); Mark S. Zaid, "Military Might Versus Sovereign Right: The Kidnapping of Dr. Humberto Alvarez-Machain and the Resulting Fallout," 19 HOUS. J. INT'L L. 829 (1997) (same).

The Justice Minister for Argentina described the *Alvarez-Machain* decision as "an historic regression in criminal law." Zaid, *supra*, at 844. Bolivia, Brazil, Venezuela, and Peru, among other nations, saw the decision as a violation of Mexico's right of sovereignty. Zaid, *supra*, at 844-45, 852-53. Equador's Ministry of Foreign Affairs stated that it considered the decision "positively illegal, because it attempts against fundamental rules of International Law, and violates the principles of sovereign equality of the States, and non-intervention in internal affairs, contained in the Charter of the United Nations and in the one of the Organization of American States." Zaid, *supra*, at 849-50. In Uruguay, the Senate voted unanimously to condemn the decision on the grounds that the ruling contravenes international law and infringes on territorial integrity. The lower house of the Uruguayan Parliament voted that the decision demonstrates "a lack of understanding of the most elemental norms of international law, and in particular an absolute perversion of the function of extradition treaties." Zaid, *supra*, at 852.

The Costa Rican Supreme Court, in its Session of Plenary Court on June 25, 1992, stated: "Legaliz[ing] abduction by other States' officials to bring the abducted before the courts of such country, is not only contrary to modern times, but is against the ideals it forged upon the principles of respect to freedom and human dignity, is against the ideals of independence of that nation, and infringes its highest principles and those of the rest of nations, that have the natural right to protect its inhabitants and to judge them according to due process, same that has been so strongly developed by that Court." Zaid, *supra*, at 848, *quoting* Resolution of the Supreme Court of Justice No. 91-712 (June 25, 1992). On January 12, 1993, the Costa Rican Supreme Court invalidated the United States – Costa Rica Extradition Treaty. Zaid, *ibid*.

Central and South American countries were not alone in their denunciations of the *Alvarez-Machain* decision. Denmark's Ministry of Justice condemned the abduction and the Court's decision, adding that "any attempt of kidnapping in Danish territory, carried out by United States' authorities, would be a violation of International Law and of the Danish Criminal Code." Zaid, *supra*, at 849. The president of Spain publicly criticized the decision as "erroneous," and the Swiss Justice Ministry spokesperson said, "[i]magine where it would lead if every country would do that. You would have anarchy." Zaid, *supra*, at 852.

The Government of Canada had filed an *amicus* brief in the Supreme Court before the opinion was issued. Its brief related the findings of a survey it conducted of the views of Australia, Austria, Finland, Germany, Great Britain, the Netherlands, Norway, New Zealand, Sweden and Switzerland. Each state "indicated that they would regard such an abduction as a violation of their sovereignty and would protest." Several countries stated they would demand the return of the abducted person, and Austria, Finland, the Netherlands, Norway, Sweden, and Switzerland also indicated that if an abducted person were brought to their territory, they "would consider that the abducted person should be returned" to the asylum state. Zaid, *supra,* at 845-46 *citing* Brief of the Government of Canada as *Amicus Curiae* in Support of Respondent, *United States v. Alvarez-Machain*, *reprinted in* 31 I.L.M. 919.

Following the Supreme Court's decision, the Canadian Minister of External Affairs informed the Canadian Parliament that any attempt by the United States to kidnap someone in Canada would be regarded as a criminal act and a violation of the United States – Canada Extradition Treaty. This position was reiterated in a diplomatic note to the U.S. State Department. Zaid, *supra*, at 846.

Naturally, the government of Mexico was outraged by the decision; it sought assurances from the United States that it would not continue a policy of transborder abductions. Upon the insistence of Mexico, the United States entered into the Treaty to

Prohibit Transborder Abductions in 1994, which is separate from the obligations imposed by the extradition treaty. However, this treaty has not been submitted to the Senate for its advice and consent, and therefore, does not have the force of law.

In this country, legislators in the House and Senate reacted to the international and domestic concern over the *Alvarez-Machain* decision by introducing legislation to ban prosecutions arising from transnational abductions. Congressman Leon Panetta introduced the International Kidnapping and Extradition Treaty Enforcement Act of 1992 in the House seeking to bar prosecution of persons forcibly abducted by U.S. agents from foreign states where an extradition treaty is in place. *See* 138 Cong. Rec. H6019 (daily ed. July 7, 1992). The proposed bill would have permitted an abduction with the foreign government's consent, but, in direct answer to the crux of *Alvarez-Machain*, further provided that "such consent may not be implied by the absence of a prohibition on such abductions in a treaty regarding extradition." *Ibid.* A group of senators similarly introduced a bill in September of 1992 that would have prohibited any officer or agent of the United States government from directly or indirectly carrying out any "abduction of any person within the territory of [a] foreign state exercising effective sovereignty over such territory without the express consent of the state." *See* 138 Cong. Rec. S14, 123-24 (daily ed. Sept. 18, 1992). Neither bill was enacted. As a result, the Supreme Court decision still remains good law.

3. The Oregon Court of Appeals Failed to Distinguish the Extradition Treaty with Turkey from the Treaty At Issue in *Alvarez-Machain*

The fact that the *Alvarez-Machain* holding applies only to the extradition treaty between the United States and Mexico is often overlooked by legal commentators and by courts faced with a challenge to their jurisdiction based on an alleged violation of an extradition treaty. It is not accurate to say that *Alvarez-Machain* stands for the proposition that any extradition treaty must contain an express prohibition of forcible abductions before the court will consider such conduct to be in violation of the treaty. Instead, the Court's decision was based on the specific language of the treaty with Mexico *and* the unique history of negotiations that led up to it. Yet, as this case demonstrates, in the wake of *Alvarez-Machain*, courts have been loath to arrive at a conclusion that a particular form of government misconduct in obtaining the presence of a person in this country for a criminal prosecution outside of an extradition process deprives the court of jurisdiction. Instead, the result in any particular challenge often rests on the overly broad generalization that, if forcible abductions are permissible, then some less egregious form of government misconduct must be permissible as well. *See, e.g., United States v. Struckman*, 611 F.3d 560, 572 (9th Cir. 2010) (applying *Alvarez-Machain* and holding that the extradition treaty with Panama was not

the exclusive means of obtaining the defendant's presence in this country for a criminal prosecution).[1]

Indeed, the Oregon Court of Appeals in this case stated: "Given that the United States Supreme Court declined to read a prohibition on forcible kidnapping into a similarly worded extradition treaty in *Alvarez-Machain* – and concluded that general principles of international law did not require such a prohibition to be implied – we do not understand how a different result could obtain relating to much less intrusive government conduct." (App. 9). However, the Oregon court erred in failing to independently examine the text, history, and circumstances surrounding the formation of the treaty with Turkey as a distinct document, arising from a different set of circumstances than those at issue with the Mexico treaty. Review

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[1] For other cases that have applied *Alvarez-Machain* to reject a challenge to the jurisdiction of a court under an extradition treaty, see *United States v. Matta-Ballesteros*, 71 F.3d 754 (9th Cir. 1995) (Extradition treaty with Honduras did not expressly prohibit U.S. Marshalls from forcibly abducting person from Honduras); *United States v. Noriega*, 177 F.3d 1206 (11th Cir. 1997) (Extradition treaty with Panama did not expressly prohibit the United States from abducting Panama's president); *United States v. Torres Gonzalez*, 240 F.3d 14 (1st Cir. 2001) (Extradition treaty with Venezuela deemed not the exclusive means of obtaining defendant's custody); *Kasi v. Angelone*, 300 F.3d 487 (4th Cir. 2002) (extradition treaty with Pakistan did not expressly prohibit the FBI from forcibly abducting Pakistani citizen in his country); *United States v. Larore*, 90 F.Supp.2d 202 (N.D.N.Y. 2000) (no express language in extradition treaty with Canada prohibiting defendant's abduction in Canada by U.S. law enforcement).

by this Court would reinforce the principle that the holding in *Alvarez-Machain* applies only to the Mexico treaty at issue.

In particular, this Court's discussion of the unique history of the negotiations between United States and Mexico limit the reach of its decision. The Court noted that, as early as 1906, the Mexican government was aware of the *Ker* holding and the United States' position that it applied to forcible abductions made outside the extradition treaty. *Alvarez-Machain*, 504 U.S. at 665. When a Mexican national was abducted and brought to the United States for trial in 1905, Mexico protested that the arrest was outside of the extradition treaty. The Secretary of State responded that the abduction was governed by *Ker*, thereby putting Mexico on notice that the United States did not regard the abduction as violating the treaty. *Id.* at 665 n11. When the current version of the extradition treaty was negotiated in 1978, Mexico did not attempt to curtail the effect of *Ker*. *Id.* at 665. Thus, the Court held, "the language of the Treaty, *in the context of its history*, does not support the proposition that the Treaty prohibits abductions outside of its terms." *Id.* at 666 (emphasis added).

In contrast to the treaty with Mexico, the language and history of the extradition treaty with Turkey demonstrate the parties' intent that extradition is the exclusive means of transferring an accused from one nation to the other. Article 1(1) of the treaty, entitled: "Obligation to Extradite," provides:

> "The Contracting Parties undertake to surrender to each other, in accordance with the provisions and conditions laid down in this Treaty, *all persons who are found within the territory of the Requested Party* and who are being prosecuted for or have been charged with an offense or convicted of an offense, or are sought by the other Party for the enforcement of a judicially pronounced penalty for an offense committed within the territory of the Requesting Party." (App. 27).

Thus, the extradition process applies: (1) to *all persons*; (2) *found* within the requested country; (3) charged with an offense. Mr. Aydiner was a person, found in Turkey, charged in the United States with an offense. The extradition treaty should have been invoked, because it pertains to "all" such persons. In contrast, the corresponding provision of the extradition treaty with Mexico at issue in *Alvarez-Machain* does not broadly cover "all persons found" within the requested state.

The exclusive nature of the treaty with Turkey is further underscored by comparing Article 1(1) to the parallel provision in the 1934 Turkish Extradition Treaty that preceded the current Treaty. Article I of the 1934 Treaty provided:

> "The Government of the United States of America and the Government of the Grand National Assembly of Turkey *agree upon requisition* to deliver reciprocally persons who, being prosecuted or condemned by the judicial authorities of one of the High

> Contracting Parties for any of the crimes or offenses enumerated in Article II, committed in territory subject to the jurisdiction of such Party, may seek asylum or be found in the territory of the other Party. * * * ." 1934 Extradition Treaty Between the United States of America and Turkey, 49 Stat. 2692, 2693 (emphasis added).

Thus, the 1934 Treaty provided that the obligation to extradite arose only "upon requisition," that is, when sought by one party to the agreement. The 1934 Treaty did not require that extradition be sought in every case. The limiting phrase "upon requisition" does not appear in the operative 1981 Treaty, and instead, the obligation regarding extradition extends to "all persons found within" the territory of the requested party. This key distinction highlights the exclusivity of the current treaty, and sets it apart from its predecessor.

The parties' mutual understanding regarding the scope of the extradition treaty is evident in Turkish law barring the extradition of its citizens. Civil law nations, including Turkey, historically have refused to extradite their own citizens to face trial elsewhere. *See* Constitution of the Republic of Turkey, Article 38 and Turkish Penal Code, Article 18 (setting forth Turkey's bar to extradition of its citizens); Abbell & Ristau, International Judicial Assistance: Extradition, § 13-4-5(6), 280 (1990) (describing tradition against the extradition of nationals in civil law countries). Instead, the person is prosecuted for the crime

in his or her own country, as reflected in Article 4 of the United States-Turkey Extradition Treaty:

> "(1) Neither of the Contracting Parties shall be bound to extradite its own nationals. The competent executive authority of the United States, however, shall have the power to grant the extradition of its own nationals, if, in its discretion, this is deemed proper to do.
>
> "(2) If the Requested Party does not extradite its own national, it shall, at the request of the Requesting Party, submit the case to its competent authorities in order that proceedings may be taken if its law so provides. * * * ." (App. 32).

In keeping with the foregoing, Turkey never has extradited one of its nationals to the United States since the inception of the 1981 Treaty. (ER 52, ER 164). The United States knew that Turkish law proscribed the extradition of its citizens when it entered into the treaty, as shown by the State Department's letter of submittal of the treaty to the President. Instead of extradition, Turkey is required to prosecute the person under its own judicial system. The conduct of the district attorney in this case, in orchestrating the return of petitioner to this country through a scheme of trickery and deceit, clearly contravened this key feature of the treaty.

Turkey would have refused to extradite defendant for the additional reason that Turkish law prohibits the imposition of the death penalty. At the

time petitioner returned to the United States, Article 38 of the Constitution of the Republic of Turkey provided: "The death penalty cannot be imposed excluding the cases of war, imminent threat of war and crimes of terror." In May of 2004 the Constitution was amended to read: "No one can be sentenced to death and general confiscation." In addition, pursuant to Article 45 of the Turkish Penal Code, the death penalty is not a permissible form of penalty under Turkish law.

Turkey also has made a firm commitment to the abolition of the death penalty in a variety of international agreements. Turkey is a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified on May 18, 1954. On January 15, 2003, Turkey signed Protocol No. 6 which allows a state to "make provision in its law for the death penalty in respect of acts committed in time of war or imminent threat of war." On January 1, 2004, Turkey signed Protocol 13, in which the member states agreed that "[t]he death penalty shall be abolished. No one shall be condemned to such penalty or executed."[2]

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[2] The death penalty was not prohibited in Turkey at the time that it entered into the 1981 extradition treaty. However, the treaty provides that it "shall not affect obligations which the Contracting Parties have undertaken *or will undertake* under any multilateral international agreement." 1981 United States-Turkey Extradition Treaty, Art. 42(2) (App. 63-64) (emphasis added). Because Protocol 13 is a multilateral agreement undertaken after the 1981 treaty, Turkey clearly is not bound to

(Continued on following page)

Because Turkey has made a firm commitment to the abolition of the death penalty, as unambiguously expressed in its domestic law and its international agreements, it would not have extradited petitioner to the United States for a capital offense, even if he were not a Turkish citizen. This Court should not countenance the state's manipulation of the immigration process through a scheme of trickery and deceit which had the express purpose of violating this fundamental principle of Turkish law.

The fact that Mr. Aydiner was a Turkish national, not subject to extradition, only compounds the nature of the violation. The parties did not intend that the United States could overcome these impediments by ignoring the extradition treaty altogether, and by obtaining defendant's custody through deceit.

Thus, the Court of Appeals' reliance on *Alvarez-Machain* was misplaced, because the distinguishing features of the treaty with Turkey and Turkish law demonstrate the exclusivity of the extradition process. In negotiating the terms of the treaty, Turkey would not have conceived that it was necessary to include specific prohibitions regarding forcible abduction, schemes of trickery and deceit, and the like.

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extradite, and would not extradite, a person to face a prosecution for a capital offense without seeking assurances that the receiving nation would not seek the death penalty. *See* Ved P. Nanda, "Bases for Refusing International Extradition Requests – Capital Punishment and Torture," 23 FORDHAM INT'L L. J. 1369 (1999-2000).

Given the language of the treaty and the history of the negotiations and extradition practice between the United States and Turkey, it is unreasonable to interpret the treaty as permitting this conduct.

4. Summary of Reasons for Review

The legal questions presented in this petition have importance beyond this case. The Oregon Court of Appeals issued a published opinion on a recurring issue of significance, *i.e.*, whether an extradition treaty provides the exclusive means of securing a person's presence in this country for a criminal prosecution. This case involves primarily the interpretation of a treaty, which constitutes part of the "supreme Law of the Land." U.S. Const., Art. VI. This case presents the Court with an opportunity to reverse the outrage that was created in the international community in the wake of the *Alvarez-Machain* case and to signal to other nations that this country will discern and execute its obligations under extradition treaties in good faith and will honor the rule of law.

The United States has entered into more than 100 bilateral extradition treaties. *See* M. Cherif Bassiouni, International Extradition; United States Law and Practice, App. II (5th ed. 2007) (listing extradition treaties). The issue whether extradition is the exclusive means to attempt to obtain a person from another country for a criminal trial will continue to arise, as it most recently did in *United States v. Struckman*, 611 F.3d 560, 572 (9th Cir. 2010), in

which the Ninth Circuit held that officials did not violate the extradition treaty with Panama by obtaining a defendant's presence outside of the extradition process.

As petitioner's case demonstrates, a reconsideration of *Alvarez-Machain* is particularly timely in light of a growing movement among other nations against the imposition of the death penalty. Because of this trend, more countries that have banned the death penalty will require, as a condition of extradition, that authorities in this country do not seek the death penalty for the extradited person. As this occurs, law enforcement officials here will be more inclined to explore unethical and illegal means of obtaining a person's presence for prosecution for a capital offense as an alternative to having to make that assurance in an extradition context. *See* Ved P. Nanda, "Bases for Refusing International Extradition Requests – Capital Punishment and Torture," 23 FORDHAM INT'L L. J. 1369 (1999-2000) (discussing "growing trend toward abolition of capital punishment" throughout the world, and the challenge this presents to the United States when seeking the extradition of capital offenders; the author cites briefly to the *Alvarez-Machain* decision and opines that "[a]bducting the criminals and taking them back to the United States for trial is not an appropriate response" to this trend).

The danger is that courts will continue to understand *Alvarez-Machain* to say that any extradition treaty can be ignored if it does not specifically bar whatever device or scheme officials use to bring an

accused person into the country. The Oregon court failed to note that the holding in *Alvarez-Machain* was limited to the treaty with Mexico and the unique history between the United States and Mexico. If this continues, no extradition treaty will be honored unless the parties thought specifically to prohibit whatever device was used in a particular case – be it kidnapping, the manipulation of immigration laws, or trickery and deceit. This trend is contrary to the well established principle that extradition treaties must be implemented and interpreted in good faith to give effect to the parties' manifest intent. *See Wright*, 190 U.S. at 57 (1903) (extradition treaties "must receive a fair interpretation, according to the intention of the contracting parties, and so as to carry out their manifest purpose.") Thus, this Court is asked to restore integrity to the manner in which extradition treaties are interpreted and carried out by state and federal law enforcement officials.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that the Court grant the petition for a writ of certiorari.

Respectfully submitted,

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208 P.3d 515

Court of Appeals of Oregon.
STATE of Oregon, Plaintiff-Respondent,
v.
Deniz Cinar AYDINER, Defendant-Appellant.
040130321, A132546.

Argued and Submitted Aug. 6, 2008.
Decided May 13, 2009.

Stephen A. Houze, Portland, argued the cause and filed the brief for appellant.

Rolf C. Moan, Assistant Attorney General, argued the cause for respondent. With him on the brief were Hardy Myers, Attorney General, and Mary H. Williams, Solicitor General.

Before LANDAU, Presiding Judge, and SCHUMAN, Judge, and ORTEGA, Judge.

LANDAU, P.J.

Defendant, a Turkish citizen, appeals a judgment of conviction for, among other things, 10 counts of aggravated murder. His primary argument on appeal is that the use of "trickery and deceit" by law enforcement authorities to secure his presence in the United States to face criminal prosecution violated this country's extradition treaty with Turkey. Accordingly, he argues, the trial court lacked personal jurisdiction and, thus, his convictions are unlawful. We affirm.

The relevant facts are undisputed. Defendant's crimes stemmed from the murder of a student at the University of Portland in 2001. In 2003, while the investigation was pending, defendant left Oregon and returned to Turkey. Meanwhile, investigators matched DNA that they had obtained from defendant before his departure with evidence from the crime scene; defendant had no knowledge of that development in the investigation, however.

The state indicted defendant, alleging 11 counts of aggravated murder; one count each of kidnapping in the second degree, sexual abuse in the first degree, and attempted rape in the first degree; two counts of sodomy in the first degree; and four counts of burglary in the first degree. The state planned to seek the death penalty. At that point, defendant was still in Turkey and was unaware that he had been charged in connection with the murder.

Defendant wanted to return to Oregon to be with his wife, who is a United States citizen. Because he had overstayed his prior visit, he was denied reentry. The applicable immigration laws prevented him from returning to the United States without a waiver of those laws. The state, having learned that defendant was in Turkey and attempting to return to this country, requested that the federal government permit him to do so in order to facilitate his arrest. Believing that he had been granted the necessary waiver, defendant purchased an airline ticket and flew back to the United States. When he arrived at the Portland

International Airport in January 2004, he was immediately arrested.

At no point before his return to this country was defendant aware of the charges against him. The United States authorities had never notified Turkey that it sought defendant for criminal prosecution. Nor did they ever request extradition pursuant to the extradition treaty between the United States and Turkey. It is undisputed that Turkey would not have extradited defendant to be prosecuted for a capital offense.

Defendant moved to dismiss the charges against him, asserting that the court lacked personal jurisdiction. That is so, he argued, because the government's "overarching scheme of trickery and deceit employed to bypass the treaty requirements" violated the extradition treaty, which he contended is the exclusive means by which authorities could secure his presence in this country for a criminal prosecution. Defendant also issued several subpoenas *duces tecum,* seeking testimony and documents from various City of Portland and federal law enforcement employees at an evidentiary hearing pertaining to the details as to how they tricked him into returning to the United States. He acknowledged that he did not know what documents or testimony those witnesses could provide.

The city and the United States moved to quash the subpoenas and opposed defendant's request for an evidentiary hearing on his motion to dismiss. The

state also opposed defendant's request for a hearing, filing a motion *in limine* to exclude any testimony or production of documents by any of the subpoenaed individuals. In general, the governmental entities argued that such testimony was unnecessary because the prosecution had stipulated to the facts that they deceived defendant about his immigration status and tricked him into returning to the United States. Such actions, they argued, do not violate the extradition treaty, because they are not required to comply with the terms of the treaty unless there is an actual request for extradition. In their view, mere trickery does not constitute a treaty violation.

The trial court quashed the subpoenas and granted the state's motion *in limine*. The court also declined to hold an evidentiary hearing on defendant's motion to dismiss, which the court denied. In its order denying the motion, the court made numerous factual findings, including that defendant "ha[d] been deceived by the government into thinking that his efforts to obtain a lawful visa had been successful." Defendant filed a motion to reconsider based on a new argument that the government's trickery and deceit violated his rights to due process, thus warranting dismissal of the charges against him. The court also denied that motion.

During the course of the prosecution, several charges were dismissed, and defendant pleaded no contest to the remaining charges. He was ultimately convicted of 10 counts of aggravated murder, one count each of sexual abuse in the first degree and

attempted rape in the first degree, two counts of sodomy in the first degree, and four counts of burglary in the first degree.[1]

On appeal, defendant assigns error to the aforementioned pretrial rulings and urges this court to vacate his judgment of conviction. Regarding the court's denial of his motion to dismiss, he renews his argument that the government's actions violated the extradition treaty between the United States and Turkey because extradition is the only means by which defendant could be brought back to this country to face criminal prosecution. Regarding the denial of his motion to reconsider, defendant argues that, even if the government's actions did not violate the extradition treaty, they deprived him of due process. Defendant also challenges the court's decisions to quash the subpoenas and exclude witness testimony at an evidentiary hearing, and requests that we remand the case for such a hearing.

We begin with defendant's assertion that the extradition treaty between the United States and Turkey provides the exclusive means by which the state could secure his presence for criminal prosecution.

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[1] Before sentencing, the parties stipulated that defendant's 10 counts of aggravated murder would merge into a single conviction. *See State v. Barrett*, 331 Or. 27, 10 P.3d 901 (2000). Notwithstanding that stipulation, the judgment states only that the convictions merge "for purpose of sentencing." Because defendant does not assign error to that aspect of the judgment, we do not address it.

In construing a treaty, we look first to its terms to determine its meaning as intended by the signatories. *Air France v. Saks,* 470 U.S. 392, 396-97, 105 S.Ct. 1338, 84 L.Ed.2d 289 (1985). If the treaty's wording is clear, resort to drafting history to ascertain its meaning is not appropriate. *Chan v. Korean Air Lines, Ltd.*, 490 U.S. 122, 134, 134 n. 5, 109 S.Ct. 1676, 104 L.Ed.2d 113 (1989).

Chapter I, Section I, Article 1 of the treaty at issue in this case – which was signed by President Jimmy Carter and ratified by the United States Senate in 1979-provides, in part:

> "(1) The Contracting Parties undertake to surrender to each other, in accordance with the provisions and conditions laid down in this Treaty, *all persons who are found within the territory of the Requested Party and who are being prosecuted for or have been charged with an offense,* or convicted of an offense, or are sought by the other Party for the enforcement of a judicially pronounced penalty for an offense committed within the territory of the Requesting Party."

(Emphasis added.)

According to defendant, the text of that provision – especially the italicized portion – makes clear the "exclusive character" of the extradition treaty. Relying on the inclusion of the phrases "all persons" and "found within the territory," he argues that, because he "squarely falls within the scope" of the relevant treaty provision, the United States was required to

seek extradition and its failure to do so violated the treaty. Defendant asserts that, because "the prosecutorial machinations in the case at bar were precisely an intentional refusal to cooperate with Turkish authorities on this extraordinarily serious criminal matter," the trial court lacked personal jurisdiction because he was brought into the United States in violation of the treaty. According to defendant, the treaty "was intended to provide the sole vehicle for transferring individuals accused of crime between the United States and Turkey." As a result, defendant argues, failing to invoke the extradition process is itself a violation of the treaty.

The state responds that nothing in the treaty prohibits it from obtaining defendant's return to this country through means outside of the extradition process. According to the state, the treaty regulates the process of extradition and, in the event that a signatory makes such a request, governs the manner in which extradition occurs. The state points to the limiting language of the text, in that it uses the phrases "Requested Party" and "Requesting Party," which, by definition, require that an extradition request has been made. Accordingly, the state asserts, "because the United States made no effort to invoke the Extradition Treaty to obtain defendant's presence in this count[r]y, no treaty violation could have occurred." Further, the state argues that this case is controlled by precedent from the United States Supreme Court, *United States v. Alvarez-Machain,* 504 U.S. 655, 112 S.Ct. 2188, 119 L.Ed.2d 441 (1992).

The defendant in *Alvarez-Machain* – a Mexican national – argued that, when the federal government forcibly kidnapped him in Mexico and brought him to the United States, those actions violated the extradition treaty between Mexico and the United States. As a result, the defendant asserted, the court had no personal jurisdiction and, thus, he could not be criminally prosecuted in the United States. 504 U.S. at 657-58, 112 S.Ct. 2188. The Court held that the treaty "does not purport to specify the *only way* in which one country may gain custody of a national of the other country for the purposes of prosecution." *Id.* at 664, 664-65, 112 S.Ct. 2188 (emphasis added) (stating further that the treaty "establish[es] the procedures to be followed when the Treaty is invoked"). The Court further concluded:

> "In sum, to infer from this Treaty and its terms that it prohibits all means of gaining the presence of an individual outside of its terms goes beyond established precedent and practice. * * * [T]o imply from the terms of this Treaty that it prohibits obtaining the presence of an individual by means outside of the procedures the Treaty establishes requires a * * * large [ ] inferential leap, with only the most general of international law principles to support it. The general principles cited by [the defendant] simply fail to persuade us that we should imply in the United States-Mexico Extradition Treaty a term prohibiting international abductions."

Id. at 668-69, 112 S.Ct. 2188.

Defendant acknowledges that, in *Alvarez-Machain*, the Court came to the opposite result from that for which he advocates in this case. *Alvarez-Machain* is distinguishable from this case, defendant asserts, because the extradition treaty is worded differently. In any event, defendant contends that *Alvarez-Machain* was wrongly decided.

Based on the text of Article 1, we agree with the state that the signatories to the treaty did not intend the extradition process to be exclusive. Of particular importance, as the state points out, is the inclusion of the phrases "Requested Party" and "Requesting Party"; without an extradition request, one would not even know to which signatory the obligations apply. The treaty also contains no express prohibition against obtaining a person's presence by any other means, including trickery or deceit. To the extent that defendant urges us to read into the treaty such an implied prohibition, we reject that contention as well. Given that the United States Supreme Court declined to read a prohibition on forcible kidnapping into a similarly worded extradition treaty in *Alvarez-Machain* – and concluded that general principles of international law did not require such a prohibition to be implied – we do not understand how a different result could obtain relating to much less intrusive governmental conduct.

The trial court did not err in denying defendant's motion to dismiss for lack of personal jurisdiction on the ground of a violation of the extradition treaty. Because we conclude that no violation occurred, we

need not address defendant's assertion that the treaty conferred on him individually enforceable rights that warrant dismissal of the charges against him as the appropriate remedy.

We turn then to defendant's assertion that, nevertheless, the trial court should have dismissed the charges against him on reconsideration. According to defendant, the government's conduct in this case violated his rights pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The state disagrees, asserting that concealing from defendant the fact of the criminal prosecution and allowing him to believe that he had been granted a waiver of the applicable immigration laws did not violate his due process rights.

Again, we agree with the state, finding the United States Supreme Court's decision in *Alvarez-Machain* to be particularly instructive in this regard, as well. In that case, once the Court concluded that the defendant's abduction did not violate the relevant extradition treaty, the Court similarly concluded that the abduction did not violate his right to due process. *See* 504 U.S. at 661, 670, 112 S.Ct. 2188 ("'[S]uch forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offence, and presents no valid objection to his trial in such court.'" (quoting *Ker v. Illinois*, 119 U.S. 436, 444, 7 S.Ct. 225, 30 L.Ed. 421 (1886))). In this case, because we have concluded that no violation of the treaty occurred, we "need not

inquire as to how [defendant] came before [the court]." *See Alvarez Machain*, 504 U.S. at 662, 112 S.Ct. 2188.

Defendant's final three assignments of error relate to the trial court's rulings quashing defendant's subpoenas and excluding the testimony of witnesses at an evidentiary hearing on his motion to dismiss. Defendant argues that he was entitled to present specific facts and details as to how he was tricked and deceived.

The state responds that any such evidence would have been cumulative because the state stipulated that it had intentionally deceived defendant in order to get him to return to the United States – and, in fact, the trial court made a finding to that effect. Furthermore, the state asserts, the trial court ruled properly because defendant admitted that he did not know what the particulars of the testimony might be.

The trial court did not err. The details of the government's conduct beyond the stipulation that local and federal government employees deliberately tricked defendant are irrelevant and would have no impact on our foregoing analysis of whether he was entitled to dismissal of the charges against him.

Affirmed.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

THE STATE OF OREGON, Plaintiff, v. DENIZ CINAR AYDINER Defendant	No. C 04-01-30321 DA 2011801-1 ORDER DENYING DEFENDANT'S MOTION TO DISMISS (Filed Jul. 12, 2005)

Having reviewed the written submissions by both parties and heard arguments of counsel, the Court makes the following findings of fact and conclusions of law:

1. That the Defendant willingly left the United States in early 2003 and traveled to Turkey where he is a citizen;

2. That the Defendant attempted to return to the United States in March of 2003 and was denied entry because he had overstayed the visa that had allowed him to be in the United States initially;

3. That following the Defendant's return to Turkey, he and his wife began making all efforts available to them to obtain a lawful visa status for the Defendant so that he could return to the United States as a spouse of a United States citizen;

4. That at the same time, the Portland Police Bureau and the Multnomah County District Attorney's Office were continuing their investigation of the May 29, 2001 murder of Catherine Johnson. They matched a DNA sample obtained from the Defendant before he left the United States with evidence from the crime scene. They then located the Defendant in Turkey;

5. That the Defendant and his wife were unaware of this development in the murder investigation and local authorities 'took no steps to inform them or the Turkish Government of it;

6. That the Defendant and his wife continued their efforts to obtain a visa;

7. That following contacts by the Portland Police Bureau with the Department of Homeland Security an information charging the Defendant with Aggravated Murder and associated charges in Multnomah County was issued and an arrest warrant signed in the fall of 2003;

8. That the District Attorney of Multnomah County requested that the Department of Homeland Security allow the Defendant to return to the United States under the silent parole feature of federal immigration law;

9. That this request was granted and the Defendant – having been deceived by the government into thinking that his efforts to obtain a lawful visa had been successful –

willingly flew back to Portland, Oregon and was arrested upon his arrival on January 16, 2004;

10. That it is unknown exactly when, or if, the Defendant's own efforts to return to the United States would have been successful without the actions of government officials;

11. That the Extradition Treaty between the United States and Turkey was never invoked and that, if it have been, Turkey would not have extradited the Defendant to the United States;

12. That the Treaty was not violated by the actions of state or federal officials in this case;

13. That the United States and Turkey have used the detention-removal process under immigration laws to transfer Turkish nationals wanted in Turkey from the United States to Turkey and Turkey indicated it would use the same process under its immigration laws to transfer an American citizen wanted in the United States from Turkey to the United States;

14. That even if it was violated, the Treaty does not give the Defendant a privately enforceable right;

15. That even if there was a treaty violation and the Defendant had a privately enforceable right, dismissal is an inappropriate remedy.

Based on these finding and conclusions of law, the Defendant's Motion to Dismiss is denied.

IT IS SO ORDERED.

Dated: 7/12/05 /s/ Frank Bearden
Frank L. Bearden
Circuit Court Judge

[SEAL]

CIRCUIT COURT OF THE STATE OF OREGON
FOURTH JUDICIAL DISTRICT

FRANK L. BEARDEN
JUDGE

MULTNOMAH COUNTY COURTHOUSE
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Re: **State of Oregon v. Deniz Cinar Aydiner**
C 0401-30321

(Filed Jul. 12, 2005)

Dear Counsel:

I have received the findings of the Court submitted by Mr. Frink and a Motion for Reconsideration submitted by Mr. Houze. The findings accurately reflect the Court's ruling on the various issues presented.

Regarding the Motion for Reconsideration, the defense again raises the issue of the Court's ruling

granting the Motion to Quash Subpoenas Duces Tecum and denying defendant's offer of proof through the testimony of several local and federal agents who, in some way or another, made it possible for defendant to secure a public interest parole visa to return to Oregon.

The sole issue at the hearing was whether or not this Court had personal jurisdiction over defendant. I found that, assuming the subpoena's were sound (which was disputed by the State), the testimony the witnesses could give or the documents they could present would not deprive this court of personal jurisdiction. The State's proposed findings accurately reflect my ruling from the June 27th hearing regarding the Motion to Quash.

The new issue raised is a violation of due process as a result of a bad faith prosecution and again arguing that the bi-lateral treaty was the exclusive method of acquiring defendant's personal presence before the court. Had the defendant been arrested in Turkey or had the defendant been made aware of the criminal charges while still in Turkey, the treaty would have been an issue. While the State worked with Homeland Security to deceive defendant into believing he could enter the United States lawfully, he was not threatened, coerced or physically removed from the protection of his homeland. The Treaty does not apply and, even if it could be somehow implicated, defendant removed himself from the protection by intentionally leaving his country.

Alleged bad faith prosecution, which I do not find to have occurred, does not alter the fact that defendant's appearance in the United States was through his own physical efforts. He cannot voluntarily leave the protection of his country and then later claim that a Treaty, which deals solely with extradition, should be applied to gain his presence here.

Under the due process heading defendant alleges a violation of "fundamental rights". It is at this point that the defense argues defendant's fundamental rights include the right to, in effect, engage the time machine and send defendant back to Turkey so the process of acquiring his presence can start anew.

The State of Oregon followed lawful procedures in securing a criminal charging instrument and obtaining a warrant. The State of Oregon then made a request of Homeland Security to expedite defendant's request to return to the United States. The specific rights defendant refers to are the right to counsel and the right to be free from cruel and unusual punishment.

Upon defendant's presence in Oregon, his right to counsel was honored. As soon as he was arrested his right to counsel kicked in and not before. His right to be free from cruel and unusual punishment still exists. And should he be convicted and further should a jury pass the death sentence, defendant may appeal on that issue. Again, this Court is focused on the narrow issue of personal jurisdiction.

Next, defendant cites a series of cases where persons were physically and forcibly abducted from a foreign jurisdiction (which did not deprive the court of personal jurisdiction) all leading to one case where there was *"active"* participation of the prosecuting attorney in the kidnap and torture of a non-U.S. citizen, *U.S. v. Toscanino,* 50 F2d 267 (1974).

The problem with this argument is that the only "active participation" by the State in this case consisted of a letter by DA Michael Schrunk simply notifying Homeland Security of his desire to arrest defendant and requesting Homeland Security to allow defendant to return to the U.S. if defendant still wished to do so. That letter request falls somewhat short of abduction and torture. Whether or not any attorney for the State had an ethical duty to notify defendant in advance of his arrival in the U.S. of the outstanding charge is not an issue that would invoke due process rights before arrest, thus depriving this court of jurisdiction.

For these and other reasons set out at the in-court hearing, the Motion for Reconsideration is denied. Defendant's written arguments and memoranda will be included in the court file as supplemental to earlier arguments.

The findings submitted by the State are signed and a copy is included in this letter.

Sincerely,

/s/ Frank Bearden
Frank L. Bearden
Circuit Court Judge

FLB/mt
Enclosure

IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,
Respondent on Review,

v.

DENIZ CINAR AYDINER,
Defendant-Appellant,
Petitioner on Review.

Court of Appeals
A132546

S057669

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

October 7, 2009 /s/ Paul J. De Muniz
DATE CHIEF JUSTICE

c: Stephen A Houze
Rolf Moan

IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,
Respondent on Review,

v.

DENIZ CINAR AYDINER,
Defendant-Appellant,
Petitioner on Review.

Court of Appeals
A132546

S057669

ORDER GRANTING MOTION

Petitioner on review's motion to waive the 14-day time limit for filing a petition for reconsideration is granted. The petition for reconsideration is filed the date of this order.

May 6, 2010 /s/ Robert D. Durham
DATE PRESIDING JUSTICE

c: Stephen A Houze
Rolf Moan

IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,
Respondent on Review, v.

DENIZ CINAR AYDINER,
Defendant-Appellant,
Petitioner on Review.

Court of Appeals
A132546

S057669

**ORDER DENYING PETITION
FOR RECONSIDERATION**

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

June 11, 2009 /s/ Paul J. De Muniz
DATE CHIEF JUSTICE

c: Stephen A Houze
Rolf Moan

TURKEY

Extradition and Mutual Assistance in Criminal Matters

Treaty signed at Ankara June 7, 1979;

Transmitted by the President of the United States of America to the Senate August 2, 1979 (S. Ex. AA, 96th Cong., 1st Sess.);

Reported favorably by the Senate Committee on Foreign Relations November 20, 1979 (S. Ex. Rep. No. 96-18, 96th Cong., 1st Sess.);

Advice and consent to ratification by the Senate November 28, 1979;

Ratified by the President December 13, 1979;

Ratified by Turkey November 21, 1980;

Ratifications exchanged at Washington December 2, 1980;

Proclaimed by the President December 31, 1980;

Entered into force January 1, 1981.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Treaty on Extradition and Mutual Assistance in Criminal Matters between the United States of America and the Republic of Turkey, with Appendix, was signed at Ankara on June 7, 1979, the text of which, in the English and Turkish languages, is hereto annexed;

The Senate of the United States of America by its resolution of November 28, 1979, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty, with Appendix;

The Treaty was ratified by the President of the United States of America on December 13, 1979, in pursuance of the advice and consent of the Senate, and was duly ratified on the part of the Republic of Turkey;

It is provided in Article 44 of the Treaty that the Treaty shall enter into force thirty days after the exchange of the instruments of ratification;

The instruments of ratification of the Treaty were exchanged at Washington on December 2, 1980; and accordingly the Treaty will enter into force on January 1, 1981;

Now, THEREFORE, I, Jimmy Carter, President of the United States of America, proclaim and make public the Treaty, with Appendix, to the end that it shall be observed and fulfilled with good faith on and after January 1, 1981, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this thirty-first day of December in the year of our Lord one thousand nine hundred eighty and of the Independence of the United States of America the two hundred fifth.

[SEAL]

JIMMY CARTER

By the President:
EDMUND S. MUSKIE
Secretary of State

TREATY ON EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS

BETWEEN

THE UNITED STATES OF AMERICA AND
THE REPUBLIC OF TURKEY

The United States of America and the Republic of Turkey, desiring to cooperate more effectively in the repression of crime by newly regulating extradition of offenders and by providing for mutual assistance in criminal matters, have decided to conclude a Treaty on Extradition and Mutual Assistance in Criminal Matters and, to that end, have appointed as their Plenipotentiaries:

Ronald I. Spiers, Ambassador of the United States of America by the President of the United States of America,

Ildeniz Divanlioglu, Director General of the Consular Affairs of the Ministry of Foreign Affairs

by the President of the Republic of Turkey,

Who, having communicated to each other their respective full powers, which were found in good and due form, have agreed as follows:

CHAPTER I
EXTRADITION

SECTION I
GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO EXTRADITE

(1) The Contracting Parties undertake to surrender to each other, in accordance with the provisions and conditions laid down in this Treaty, all persons who are found within the territory of the Requested Party and who are being prosecuted for or have been charged with an offense, or convicted of an offense, or are sought by the other Party for the enforcement of a judicially pronounced penalty for an offense committed within the territory of the Requesting Party.

(2) When the offense has been committed outside the territory of the Requesting Party, the Requested Party shall grant extradition subject to the provisions described in this Treaty if either:

(a) the laws of the Requested Party provide for the punishment of such an offense committed in similar circumstances, or

(b) the offense has been committed by a national of the Requesting Party, and that Party has jurisdiction, according to its laws, to try that person.

ARTICLE 2

EXTRADITABLE OFFENSES

(1) Extraditable offenses, pursuant to the provisions of this Treaty, are:

(a) Offenses, regardless of whether listed in the Appendix to this Treaty or not, which are punishable under both the federal laws of the United States and the laws of Turkey by deprivation of liberty at least for a period exceeding one year or by a more severe penalty.

(b) Offenses listed in the Appendix to this Treaty which are punishable under both the laws of the Requesting Party and the Requested Party for at least a period exceeding one year or by a more severe penalty.

For purposes of extradition, it shall not matter whether the laws of the Contracting Parties place the offense within the same category of offenses or describe an offense by the same terminology.

(2) Extradition shall be granted in respect of an extraditable offense for the enforcement of a penalty or prison sentence, if the duration of the penalty or prison sentence still to be served amounts to at least six months.

(3) Subject to the conditions set out in paragraph (1), extradition shall also be granted:

(a) For attempts to commit, or participation as principal, accomplice or accessory in any extraditable offense;

(b) For the offense of association to commit a crime under the laws of Turkey and for conspiracy under the laws of the United States when the facts establish an offense under the laws of both Contracting Parties;

(c) For any extraditable offense when, only for the purpose of granting jurisdiction to the United States Government, transportation, transmission of persons or property, the use of mails or other means of communication or use of other means of carrying out Interstate or foreign commerce constitutes an element of the specific offense.

(4) When a request for extradition comprises several separate offenses and extradition has been granted for one of the extraditable offenses, it shall also be granted for other extraditable offenses which could not otherwise fulfill the requirements of paragraphs (1) and (2) above as related to the deprivation of liberty to be served or duration of the penalty to be enforced in the Requesting Party.

ARTICLE 3

CONDITIONS OF REFUSAL

(1) Extradition shall not be granted:

(a) If the offense for which extradition is requested is regarded by the Requested Party to be of a political character or an offense connected with such an offense; or if the Requested Party concludes that the request for extradition has, in fact, been made to prosecute or punish the person sought for an offense of a political character or on account of his political opinions.

However, any offense committed or attempted against a Head of State or a Head of Government or against a member of their families shall not be deemed to be an offense of a political character.

The provisions of this paragraph shall not affect any obligation of the Contracting Parties which has already been undertaken or may subsequently be undertaken by them under any multilateral international agreement.

(b) If the offense for which extradition is requested constitutes a purely military offense which is not an offense under ordinary criminal law;

(c) If the person whose surrender is sought has, under the laws of either the Requesting or the Requested Party, become immune by reason of lapse of time from prosecution or punishment for the offense for which extradition is requested;

(d) If the person whose surrender is sought has been tried and acquitted or punished with final and binding effect in the Requested Party for the offense for which extradition is requested;

(e) If the offense for which extradition is requested has, according to the laws of the Requested Party, been committed in its territory and has been or will be submitted to its appropriate judicial authorities for prosecution; or

(f) If the offense for which extradition is requested has been or is subject to amnesty or pardon by either of the Parties.

(2) Extradition may be refused in any of the following circumstances:

(a) If the person whose surrender is sought is being prosecuted in the Requested Party for the same offense;

(b) If the Requested Party has decided either not to prosecute or to terminate prosecution for the same offense; or

(c) If the person whose surrender is sought has been tried and acquitted or punished in the territory of a third State for the same offense.

ARTICLE 4

NATIONALS

(1) Neither of the Contracting Parties shall be bound to extradite its own nationals. The competent executive authority of the United States, however, shall have the power to grant the extradition of its own nationals, if, in its discretion, this is deemed proper to do.

(2) If the Requested Party does not extradite its own national, it shall, at the request of the Requesting Party, submit the case to its competent authorities in order that proceedings may be taken if its law so provides. If the Requested Party requires additional documents or evidence, such documents or evidence shall be submitted without charge to that Party. The Requesting Party shall be informed of the results of its request.

(3) Requests for the surrender of persons sought for offenses committed prior to the entry into force of the present Treaty shall not be granted by the Requested Party for nationals of that Party.

ARTICLE 5

DETERMINATION

The right to determine the nature of the offense which entails the refusal of extradition as enumerated in Article 3 rests solely within the authority of the Requested Party.

ARTICLE 6

CHANNELS AND LANGUAGE OF COMMUNICATION

(1) The request for extradition shall be made in writing through diplomatic channels.

(2) The request for extradition is to be written in the language of the Requesting Party.

However, such a request and its supporting documents shall be accompanied by certified translations in the language of the Requested Party.

SECTION II
REQUESTS

ARTICLE 7

CONTENTS OF THE REQUEST

(1) A request relating to a person being prosecuted or who is charged with an offense, and who has yet to be convicted, shall be accompanied by the following:

(a) A warrant of arrest issued by a judge or other competent judicial officer;

(b) A statement of the facts of the case;

(c) Such evidence as, according to the laws of the Requested Party, would justify arrest and committal for trial of the person sought if the offense had been committed in the territory of the Requested Party;

(d) Evidence proving that the person sought is the person to whom the warrant of arrest refers, including information, if available, on nationality; and

(e) The text of the applicable laws of the Requesting Party, including the law defining the offense, the law prescribing the punishment for the offense, and the law relating to the limitation of legal proceedings or the enforcement of the penalty for the offense.

(2) A request relating to a person who has been convicted but against whom there is no final judgment or sentence, shall be accompanied by the following:

(a) The record of the judgment or conviction;

(b) A statement of the facts of the case;

(c) A warrant of arrest issued by a judge or other competent judicial officer;

(d) Evidence proving that the person sought is the person to whom the judgment or conviction refers, including information, if available, on nationality; and

(e) The text of the applicable laws of the Requesting Party, including the law defining the offense, the law prescribing the punishment for the offense, and the law relating to the limitation of legal

proceedings or the enforcement of the penalty for the offense.

(3) A request relating to a person against whom there is a final judgment or sentence shall be accompanied by the following:

(a) The record of the judgment or sentence;

(b) A statement of the facts of the case;

(c) A warrant of arrest or detention order issued by a judge or other competent judicial officer;

(d) A statement showing how much of the sentence has been served;

(e) Evidence proving that the person sought is the person to whom the judgment or conviction refers, including information, if available, on nationality; and

(f) The text of the applicable laws of the Requesting Party, including the law defining the offense, the law prescribing the punishment for the offense, and the law relating to the limitation of legal proceedings or the enforcement of the penalty for the offense.

(4) A request relating to a person who has been convicted in his absence or in contumacy shall be accompanied by the following:

(a) The record of the judgment or conviction;

(b) A statement of the facts of the case;

(c) A warrant of arrest or detention order issued by a judge or other competent judicial officer;

(d) Such evidence as, according to the laws of the Requested Party, would justify arrest and committal for trial of the person sought if the offense had been committed in the territory of the Requested Party;

(e) Evidence proving that the person sought is the person to whom the judgment or conviction refers, including information, if available, on nationality; and

(f) The text of the applicable laws of the Requesting Party, including the law defining the offense, the law prescribing the punishment for the offense, and the law relating to the limitation and legal proceedings or the enforcement of the penalty for the offense.

Such convictions may be treated as final convictions if the law of the Requesting Party so provides.

ARTICLE 8

ADDITIONAL EVIDENCE AND INFORMATION

(1) If the Requested Party considers that the evidence and information submitted in support of the request for the extradition of a person is not sufficient to fulfill the requirements of this Treaty, that Party shall request necessary additional evidence and

information. That Party may fix a time limit for the submission of such evidence and information and, upon the Requesting Party's application, for which reasons shall be given, may grant a reasonable extension of the time limit.

(2) If the person sought is under arrest and the additional evidence and information submitted is not sufficient, or if such evidence or information is not received within the period specified by the Requested Party, the person sought shall be discharged from custody. However, such discharge shall not prevent a subsequent request for extradition for the same offense. In this connection it shall be sufficient if reference is made in the subsequent request to the supporting documents already submitted.

ARTICLE 9

MEASURES TO BE TAKEN

The Contracting Parties shall take all necessary measures after the information and documents related to the request for extradition have been received, including a search for the person sought. When located, the person sought shall be detained until the competent authorities of the Requested Party reach their decision. If the request for extradition is granted, the detention shall be continued until surrender.

ARTICLE 10

PROVISIONAL ARREST OR DETENTION

(1) In cases of urgency, either Contracting Party may apply for the provisional arrest or detention of the person sought before the request for extradition has been submitted to the Requested Party through diplomatic channels. The request for provisional arrest or detention may be made either through diplomatic channels or directly between the Department of Justice of the United States and the Ministry of Justice of Turkey.

(2) The application for provisional arrest or detention shall state that a warrant of arrest or a judgment exists and that it is intended to make a request for extradition. It shall also state the offense for which extradition will be requested and when and where such offense was committed and shall give all available information concerning the description of the person sought and nationality. The application shall also contain such further information, if any, necessary to justify the issuance of a warrant of arrest in the Requested Party had the offense been committed, or the person sought convicted, in that Party.

(3) The Requested Party shall make the necessary arrangements for the provisional arrest or detention and shall notify the other Party when the person sought has been arrested or detained specifying that the person sought will be released if the documents mentioned in Article 7 are not submitted

within a period of 60 days from the date of arrest or detention.

(4) If the documents for extradition are submitted to the executive authority of the Requested Party within the 60 day time limit, the arrest or detention shall continue until a decision on the request for extradition has been reached by the competent authorities of the Requested Party. If the request for extradition is granted, the arrest or detention may be extended to the extent permitted by the laws of the Requested Party.

(5) If the person sought is released from arrest or detention because the extradition documents have not been received by the executive authority of the Requested Party within the 60 day time limit, the Requesting Party may make a new request for extradition when the documents are subsequently received.

SECTION III
DECISIONS

ARTICLE 11

DECISION ON EXTRADITION AND SURRENDER

(1) The Requested Party shall promptly communicate to the Requesting Party the decision on the request for extradition. The Requested Party shall give the reasons for any complete or partial rejection of the request for extradition.

(2) If the request for extradition is granted, the competent authorities of the Contracting Parties shall agree on the time and place of surrender of the person sought. Surrender shall take place within such time as may be prescribed by the laws of the Requested Party.

(3) If the person sought is not removed from the territory of the Requested Party within the time required under paragraph (2), that person may be set at liberty. The Requested Party may subsequently refuse to extradite that person for the same offense.

(4) If circumstances beyond its control prevent a Contracting Party within the time required under paragraph (2) from surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting Party before the expiration of the specified time. In such a case the competent authorities of the Contracting Parties may agree on a new time for the surrender.

(5) If the person sought flees prior to surrender, a new request for extradition need not he accompanied by the documents specified in Article 7 when that person is located.

ARTICLE 12

CONCURRENT REQUESTS

(1) If extradition is requested by more than one State, either for the same offense or different offenses, the Requested Party shall freely decide on

these requests, taking into consideration all the circumstances and especially the nationality of the person sought, the place where the offense or offenses were committed, the seriousness of the offense or offenses and the respective dates of the requests for extradition.

(2) The Requested Party, while granting extradition in such a case, may authorize the Requesting Party to surrender subsequently the person sought to a third State which also requested extradition.

ARTICLE 13

DEFERRED SURRENDER

When the person whose surrender is sought is being prosecuted or is serving a sentence in the territory of the Requested Party for an offense other than that for which extradition has been requested, surrender of this person may be deferred by the Requested Party until the conclusion of the prosecution and the full execution of any punishment that may be or may have been awarded. In this case, the Requested Party shall inform the Requesting Party accordingly.

ARTICLE 14

INFORMATION ON THE RESULTS OF PROCEEDINGS

(1) The Contracting Party to which the person sought has been surrendered shall inform the other

Party of the results of the criminal proceedings initiated against this person.

(2) In case of conviction, a certified copy of the final judgment shall be transmitted to the other Contracting Party.

ARTICLE 15

DELIVERY OF PROPERTY AND VALUABLES

(1) Upon the request of the Requesting Party, the Requested Party, subject to its laws and the interests of third parties, shall seize and deliver the following property and valuables:

(a) Property which has been used in committing the crime or which may be required as evidence;

(b) Property and valuables which have been acquired as a result of the offense and were found in the possession of the person sought at the time of arrest or detention, or which are discovered subsequently;

(c) Articles subsequently acquired from the property and valuables connected with the offense.

(2) If possible, the property specified in paragraph (1) shall be delivered to the Requesting Party at the same time as the surrender of the person extradited. Property and valuables seized under paragraph (1) shall be delivered even if extradition

already granted cannot be carried out owing to the death or escape of the person sought.

(3) The said property and valuables can be temporarily retained for proceedings pending in the territory of the Requested Party or they can be delivered under the condition of restitution.

(4) However, the rights of the Requested Party or a third State concerning the said property and valuables are reserved. Where there are such rights, the property and valuables shall be returned to the Requested Party free of charge and as soon as possible after the proceedings.

SECTION IV
SPECIAL PROVISIONS

ARTICLE 16

RULE OF SPECIALITY

(1) A person who has been extradited in accordance with the present Treaty shall not be prosecuted, punished or detained for the enforcement of a sentence or subjected to any other restriction on personal freedom or delivered to a third State for any offense committed prior to surrender from the territory of the Requested Party other than that for which extradition was granted, except in the following cases:

(a) If the person extradited, having had for a period of 60 days from the date of final release an opportunity to leave the territory of the Party to which the person has been surrendered still remains

in the territory of that Party. This period does not include the time during which the released person could not voluntarily leave the territory of that Party;

(b) If, after having left, the person has returned voluntarily to the territory of the Party to which surrender was granted; or

(c) If there is an express consent of the Requested Party.

(2) When the consent of the Requested Party is requested for the purposes of prosecution or for the execution of a sentence concerning an offense committed prior to the surrender other than that for which extradition was granted, the Requesting Party shall comply with the procedure provided in Article 7 of the present Treaty, and provide a record established by a judge or competent officer of the statement made by the extradited person in respect of the request for consent.

ARTICLE 17

RE-EXTRADITION TO A THIRD STATE

(1) Except as provided in Article 16, paragraph (1), the Requesting Party shall not, without the consent of the Requested Party, re-extradite to a third State a person extradited to the Requesting Party and sought by the third State for an offense committed prior to surrender.

(2) A request for consent to re-extradition to a third State shall be accompanied by the documents supporting the request for extradition made by the third State, if the Requested Party requires these documents for its decision. These documents shall conform to the documents mentioned in Article 7 of this Treaty.

ARTICLE 18
TRANSIT

(1) The transit of a person who is the subject of extradition from a third State through the territory of one Contracting Party to the territory of the other Contracting Party shall be granted upon submission of a request, provided the offense involved is an extraditable offense under Article 2 and that the Contracting Party requested to permit transit does not consider the offense to be one covered by Article 3.

The request for transit shall be accompanied by a copy of a warrant of arrest, final judgment or detention order. In addition, the request shall contain a statement as mentioned in Article 7.

(2) The Requested Party shall not be bound to permit the transit of its nationals, nor persona who may be prosecuted or required to serve a sentence in its territory.

(3) If air transport is to be used, the following provisions shall apply:

(a) When no intermediate stop is scheduled, the Contracting Party shall notify the other Contracting Party that transit will occur, certify that a warrant of arrest, final judgment or detention order exists and state the name and nationality of the person in transit.

(b) When an unscheduled landing occurs, notification as provided in (a) shall have the effect of a request for provisional arrest as provided in Article 10. Thereafter, a request for transit as provided in paragraph (1) shall be made.

(c) When an intermediate stop is required, the Contracting Party requesting transit shall submit a request as provided in paragraph (1).

(4) If the circumstances require detention pending transit, the Contracting Party requesting transit may be required to follow the provisions of Article 10.

ARTICLE 19

ADMINISTRATIVE MATTERS

(1) Expenses in the territory of the Requested Party for processing the extradition request for the person sought shall be borne by that Party until surrender. The expenses after surrender shall be borne by the Requesting Party.

(2) The expenses incurred by reason of transit shall be borne by the Requesting Party.

(3) Documents submitted as required by Article 7 shall be admitted into evidence by the courts of the Requested Party provided they are sealed with the official seal of the Department of State of the United States or the Ministry of Justice of Turkey and are otherwise in compliance with the laws of the respective Parties.

(4) The appropriate legal officers of the Requested Party shall, by legal means provided under its laws, assist the Requesting Party before its respective judicial authorities.

CHAPTER II
MUTUAL ASSISTANCE IN CRIMINAL MATTERS

SECTION I
GENERAL PROVISIONS

ARTICLE 20

MUTUAL ASSISTANCE

The Contracting parties undertake to afford each other, in accordance with the provisions of Chapter II of this Treaty, mutual assistance in criminal matters.

ARTICLE 21

SCOPE OP ASSISTANCE

(1) Each of the Contracting Parties may submit to the other Party requests for assistance in criminal matters.

(2) Criminal matters for which mutual assistance shall be afforded include investigations and criminal proceedings in respect of offenses, the punishment of which falls or would fall within the jurisdiction of the judicial authorities of the Requesting Party under its law.

(3) Mutual assistance shall include:

(a) Execution of requests related to criminal matters;

(b) Effecting the taking of testimony or statements of persons;

(c) Effecting the production, preservation and authentication of documents, records, or articles of evidence;

(d) Effecting the return to the Requesting Party of any objects, articles or other property or assets belonging to it or obtained through such offenses;

(e) Service of all judicial documents, writs, summonses, records of judicial verdicts and court judgments or decisions;

(f) Effecting the appearance of a witness or expert before a court of the Requesting Party;

(g) Location of persons; and

(h) Providing judicial records, evidence and information.

(4) For the purposes of Chapter II of this Treaty, punishment of an offense is within the jurisdiction of the judicial authorities of the Requesting Party if the offense is deemed by its laws to have been committed in the territory of that Party, or, if committed outside the territory, the laws of the Requesting Party provide for prosecution of the offense.

ARTICLE 22

REFUSAL OF MUTUAL ASSISTANCE

(1) Judicial assistance may be refused:

(a) If the investigation or proceedings concerns:

(i) an offense which the Requested Party considers to be a political offense or an offense connected with a political offense; or

(ii) a purely military offense which does not constitute an offense under ordinary criminal law.

(b) If the Requested Party considers that execution of the request is likely to prejudice its sovereignty, security, or similar essential interests.

(2) For the purposes of Chapter II of this Treaty, the following offenses shall not be considered political offenses or offenses connected with a political offense:

(a) Offenses for which investigations and proceedings are obligatory for the Contracting Parties under multilateral international agreements; and

(b) Offenses against a Head of State or a Head of Government or members of their families.

ARTICLE 23

SCOPE OF USE

(1) Use of any testimony, statements, documents, records or articles of evidence obtained by the Requesting Party under Chapter II, Section I, is limited to the purposes of investigations or criminal proceedings and adjudications of claims for damages connected with the offense which is the subject of the investigation or proceedings in the Requesting Party.

(2) Furthermore, the material mentioned in paragraph (1) above may also be used in an investigation or prosecution relating to an offense other than the offense for which assistance was granted, provided the purpose fells within the scope of Chapter II Section I.

SECTION II
REQUESTS

ARTICLE 24

CONTENTS OF REQUESTS

(1) A request for the taking of testimony or statements of persons, or for effecting the production, preservation and authentication of documents, records, or articles of evidence shell specify the name of the authority conducting the investigation or

proceedings to which the request relates and, insofar as possible, shall also indicate:

(a) the subject matter and nature of the investigation or proceeding;

(b) the principal need for the evidence or information sought;

(c) the full name, place and date of birth, address and any other available information, such as nationality, which may aid in the identification of the person or persons who are the subjects of the investigation or proceeding;

(d) the name, address and nationality of the person whose testimony or statement is sought, or from whom documents, records or articles of evidence are requested; and

(e) a description of the documents, records or articles of evidence to be produced or preserved, and of the manner in which they should be reproduced and authenticated.

(2) The requests, insofar as possible and to the extent necessary, shall also include:

(a) a description of the particular procedure to be followed, if any;

(b) a statement as to whether sworn or affirmed testimony or statements are required; and

(c) a description of the information, statement or testimony sought.

ARTICLE 25

EXECUTION OF REQUESTS

(1) Except as otherwise provided in this Chapter, requests shall be executed in accordance with the usual procedure under the laws of the Requested Party.

(2) The Requested Party may consent to a request to apply the procedure of the Requesting Party, to the extent that such procedures are not incompatible with the laws of the Requested Party.

(3) A person in the Requested Party from whom evidence is sought shall be bound to testify and produce documents, records, or articles of evidence in the same manner and to the same extent as in criminal investigations or proceedings in the Requested Party, unless such person has a right to refuse to do so under the laws of that Party.

(4) The appropriate judicial officers and other officials of the Requested Party shall use all means within their power under the laws of the Requested Party to execute requests. When the execution of a request requires judicial actions, the officials of the Requested Party shall present the requests to the appropriate court at no expense to the Requesting Party.

(5) On the express request of the Requesting Party, the Requested Party shall state the date and place of execution of the request. Under the requirements and provisions of the laws of either Party,

appropriate officers of the Requesting Party, or other interested persons, may be present at the execution of the requests.

ARTICLE 26

RECORDS AND DOCUMENTS IN POSSESSION OF CONTRACTING PARTIES

Upon request, the Requested Party shall provide to the Requesting Party, on the same conditions and to the same extent as they would be available to authorities performing comparable functions in the Requested Party, the original or certified copies of:

(a) Judgments and decisions of courts, and

(b) Documents, records, and articles of evidence, including transcripts and official summaries of testimony, contained in the files of a court or investigative authority, if the Requested Party determines it is appropriate.

ARTICLE 27

SEARCHES AND SEIZURES OF PROPERTY AND ARTICLES

When the request seeks the handing over of any property or articles to be used in a criminal investigation or proceeding, and when this requires the execution of a search warrant, a search and seizure shall be made only in accordance with the laws of the Requested Party.

ARTICLE 28

DELIVERY AND RETURN OF DOCUMENTS, RECORDS, OR ARTICLES OF EVIDENCE

(1) The Requested Party may postpone the delivery of original documents or records, or articles of evidence requested if they are needed in connection with pending proceedings by the Requested Party.

(2) Any original documents, records or articles of evidence delivered in execution of requests shall be returned by the Requesting Party to the other Party as soon as possible unless the Requested Party waives their return.

(3) However, the competent authority of the Requesting Party shall be entitled to retain articles for disposition in accordance with its laws if such articles belong to persons in that Party and no title or other secured rights are claimed by a person in the Requested Party.

SECTION III
SERVICE OF DOCUMENTS

ARTICLE 29

REQUESTS FOR SERVICE OF DOCUMENTS

(1) A request for the service of documents, including court judgments, records of verdicts, writs, summonses or other documents which are transmitted to the Requested Party, shall include:

(a) the name of the authority requesting service;

(b) the name, address, and, if known, nationality of the person to be served; and

(c) the approximate allowances, travel and subsistence expenses payable to the witness or expert whose appearance is sought in the Requesting Party.

(2) If the Requesting Party specifies in its request of service a date for any personal appearance, it should take into consideration, when setting the date for the appearance and forwarding the request, that the request mast be received by the Requested Party at least 30 days before that date.

ARTICLE 30

EXECUTIONS OF REQUESTS FOR SERVICE OF DOCUMENTS

(1) The Competent Authority of the Requested Party shall effect service of any document, which is transmitted for this purpose by the Competent Authority of the Requesting Party, in the manner provided by its own laws and procedure for the service of similar procedural documents.

(2) Proof of service shall be made by means of a receipt, dated and signed by the person served or by means of a declaration specifying the form and date of service and signed by the person effecting it.

(3) The Requested Party shall promptly transmit to the Requesting Party the receipt of service or the declaration.

(4) If service cannot be effected, the reasons shall be communicated to the Requesting Party with the documents sought to be served.

(5) Service of a document under this Article on a person other than a national of the Requesting Party does not confer jurisdiction in the Requesting Party.

(6) Each Contracting Party shall retain the right to serve documents on its own nationals in the Requested Party through its diplomatic or consular officials.

ARTICLE 31

APPEARANCE OF WITNESSES AND EXPERTS IN THE REQUESTING PARTY

(1) If the Requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, that Party shall so indicate in its request for service of a summons. The Requested Party shall invite the witness or expert served to appear before the relevant judicial authority of the Requesting Party and ask whether the person agrees to the appearance.

The Requested Party shall promptly notify the Requesting Party of the reply of the witness or expert.

(2) A witness or expert who fails to answer a summons to appear before a judicial authority of the Requesting Party shall not, even if the summons contains a notice of penalty, be subjected to any civil or criminal forfeiture, measure of restraint or legal sanction unless subsequently the person enters the territory of the Requesting Party and is there again duly summoned.

ARTICLE 32

TRANSFER AND APPEARANCE OF DETAINED PERSONS

(1) If the appearance of a person held in custody is needed and requested by the Requesting Party as a witness or for purposes of confrontation before a judicial authority of that Party, the person in custody may temporarily be transferred to the territory of that Party if:

(a) The person in custody consents thereto;

(b) The transfer shall not prolong the custody; and

(c) The Requested Party determines that there are no other important reasons against the transfer.

(2) Execution of the request for the transfer of the person in custody may be postponed as long as the presence of the person is necessary for an investigation or proceeding in the Requested Party.

(3) The Requesting Party shall have the authority and obligation to keep the person in custody unless the other party authorizes release. When no longer needed, the person in custody shall be returned as soon as circumstances permit.

(4) The Requested Party shall not decline to return a transferred person solely because he is a national of that Party.

ARTICLE 33

TRANSFER OF AN ACCUSED PERSON

(1) When, in connection with a request for assistance under this Chapter, the Requesting Party requires the transfer to the other Party of an accused person for purposes of confrontation, the request shall so state. Upon transfer, the Requested Party shall hold him in custody as long as necessary and shall return him immediately thereafter.

(2) If the law of the Requested Party requires proof that the Requesting Party has the accused in custody, the Requesting Party shall attach to its request any judicial orders or other documents the Requested Party requires.

(3) On receipt of the request, the Competent Authority of the Requested Party will promptly seek from the appropriate authorities any legal process necessary to keep the accused in custody. The Requested Party will notify the Requesting Party that custody is authorized before the transfer takes place.

ARTICLE 34
SAFE CONDUCT

(1) A witness or expert, whatever his nationality, appearing before a judicial authority in the Requesting Party pursuant to a request made under this Treaty, shall not be prosecuted or, except as provided in paragraph (3) of Article 32 or paragraph (1) of Article 33, be detained or subjected to any other restriction of personal liberty in the territory of that Party with respect to any act or conviction which preceded his departure from the territory of the Requested Party.

(2) A person, whatever his nationality, summoned before a judicial authority in the Requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions which preceded his departure from the territory of the Requested Party and which are not specified in the request.

(3) The safe conduct provided in this Article shall cease if 10 days after the person receives official notification that his presence is no longer required, the person, being free to leave the territory of the Requesting Party, has not done so, or after having left, has voluntarily returned.

SECTION IV
INFORMATION

ARTICLE 35

EXCHANGE OF INFORMATION

(1) With a view to furthering the purposes of this Treaty, the authorities of either Party are authorized to furnish any information, documents, records or evidence which may be of interest to the other in pertinent matters including investigations or proceedings in either Party, to the extent permitted by their laws and under such conditions as are appropriate.

(2) Where appropriate, the Parties will provide each other relevant information relating to their laws, regulations, statutes and international practices in criminal matters.

ARTICLE 36

RECORDS

(1) To the maximum extent possible, the appropriate authorities of the Contracting Parties shall inform each other of criminal convictions and subsequent measures concerning nationals of the other Party.

(2) On request, the Parties shall provide copies of judicial records relating to criminal proceedings against a national of the Requesting Party to the same extent as those records are available to judicial authorities in the Requested Party.

ARTICLE 37

LOCATION OP PERSONS

If the Requesting Party requests information as to the location of persons who are believed to be within the Requested Party, the Requested Party shall make every effort to ascertain the whereabouts and addresses of such persons in its territory. Such requests shall include all available information on identity and location.

SECTION V
PROCEDURE

ARTICLE 38

COMPETENT AUTHORITIES

(1) The Competent Authorities under Chapter II of this Treaty shall be the Department of Justice of the United States of America and the Ministry of Justice of the Republic of Turkey.

(2) Requests under this Chapter shall be made only by the Competent Authorities and may be transmitted directly between them or through diplomatic channels.

(3) The Competent Authority of the Requested Party shall promptly transmit requests to the appropriate authorities for execution.

ARTICLE 39

ACTION ON THE REQUEST

(1) If the Requested Party determines that the request for assistance is not consistent with the provisions of this Chapter or that it cannot be executed, that Party shall immediately inform the Requesting Party and specify the reasons.

(2) Upon completion of a request for assistance, the Requested Party shall return the original request to the Requesting Party together with all the documents, information and evidence obtained.

ARTICLE 40

LANGUAGE

(1) Requests for mutual assistance and all supporting documents shall be prepared in the language of the Requesting Party.

(2) These requests and their supporting documents shall be accompanied by true and complete translations in the language of the Requested Party.

(3) Translation of all transcripts, statements, or documents or records obtained through a request shall be incumbent upon the Requesting Party.

ARTICLE 41
EXPENSES

Requests under this Chapter shall be executed by the Requested Party without any expense to the Requesting Party, except for the following:

(a) Allowances, including subsistence and travel expenses, for a witness or expert invited to appear in the Requesting Party under Article 31. These allowances and expenses shall be calculated as from the place of residence in the Requested Party and shall be at rates equal to those provided in the schedules and rules in force in the Requesting Party;

(b) Expenses involved in the transfer and return of detained persons transferred under Article 32 or Article 33; and

(c) Fees of private experts specified by name in the request.

CHAPTER III
FINAL PROVISIONS

ARTICLE 42
TERRITORIAL APPLICATION

(1) A reference in this Treaty to the territory of either Contracting Party is a reference to all territory under its jurisdiction.

(2) This Treaty shall not affect obligations which the Contracting Parties have undertaken or

will undertake under any multilateral international agreement.

ARTICLE 43

SCOPE OF EFFECT

This Treaty shall apply to offenses encompassed by Article 2 committed before and after the date this Treaty enters into force. Extradition shall not be granted, however, for an offense committed before this Treaty enters into force which was not an extraditable offense under previous agreements.

ARTICLE 44

ENTRY INTO FORCE AND DENUNCIATION

(1) The present Treaty shall be subject to ratification and the exchange of the instruments of ratification shall take place in Washington.

(2) The present Treaty shall enter into force 30 days after the exchange of the instruments of ratification and shall remain in force indefinitely.

(3) Upon entry into force of this Treaty, the Treaty of Extradition between the United States and Turkey signed at Lausanne, Switzerland on August 6, 1923,[1] shall cease to have effect, except that requests presented prior to entry into force of the present

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[1] TS 872; 49 Stat. 2692.

Treaty shall be processed according to the provisions of the Treaty of 1923.

(4) Either Contracting Party may denounce and terminate this Treaty by giving prior written notice to the other Party. Such denunciation shall take effect six months after the receipt of the notice.

IN WITNESS WHEREOF the respective Plenipotentiaries of the Contracting Parties have signed the present Treaty and have affixed hereunto their seals.

DONE at Ankara in duplicate, this seventh day of June, 1979, in the English and Turkish languages, both texts being equally authentic.

/s/ Ronald I. Spiers[2]	/s/ I. Divanlioglu[3]
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY:

[2] Ronald I. Spiers.

[3] I. Divanlioglu.